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MESSAGE

OF THE

ACTING GOVERNOR, STEVENS T. MASON,

TO THE

LEGISLATIVE COUNCIL,

OF THE TERRITORY OF MICHIGAN,

OF THE 17TH AUGUST, 1835;

TOGETHER WITH THE DOCUMENTS ACCOMPANYING THE SAME, AND THE

REPORT,

OF THE SELECT COMMITTEE,

TO WHICH THE SAID MESSAGE AND DOCUMENTS WERE REFERRED, PRESENTED BY

MR. DOTY, Chairman.

DETROIT:

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MESSAGE.

To the Legislative Council of the Territory of Michigan:

Important considerations, fellow citizens, arising from the controversy in which we are unhappily engaged, relative to our southern boundary, demanding your deliberation, have induced me to call you together at this time; and although aware that another session of the Legislative Council was not anticipated by the public, at a period when we are so soon to change our form of government, I trust, that when all the circumstances requiring it are examined and understood, a full justification will be found for the measure.

Communications of a recent date, having advised me to accept a compromise offered by the state of Ohio, the terms of which, as I conceive, would wrest from us the rights which we are endeavoring to maintain, I have been impelled by a sense of duty to ask your views, and to consult the wishes of your constituents. Sensible that I possessed neither the inclination nor the power to adjust the controversy on the conditions proposed, and feeling unwilling to assume the high and fearful responsibility of bringing upon our country consequences of the gravest character, by my single determination, I have appealed to the wisdom of the immediate representatives of the people for their counsel and advice. I have done this the more readily, when I recollect the firmness with which they have heretofore asserted and guarded the integrity of our territorial limits.

if any aid should be required. I mention this order and quote its language, for the purpose of showing, that from the moment of the vaunting boast of "a million of freemen," the use of military force was contemplated by her, although the authorities of the state have proclaimed to the nation her intended measures to have been exclusively pacific.

Having received information through the Secretary of State, about the time of the arrival of the Governor of Ohio at Perrysburgh, that the President, in his deep anxiety for the adjustment of the controversy without a collision, had appointed commissioners of high character as mediators between the parties, I addressed a note to His Excellency the Governor of Ohio, giving him the information, and submitting to his consideration the propriety of delaying his measures until after their arrival. My communication I conceived to be couched in mild and respectful lsnguage; but although not intended as such, it was viewed as "a tissue of threats and menaces." Nothing could have induced me to have excited feelings which were already embittered; and that my motives should have been misconstrued, was to me a source of regret. I remarked that it was far from my intention to dictate, but that I made the suggestion for a suspension of operations from motives and feelings which I trusted would be understood and appreciated; and that I earnestly hoped that on the arrival of the commissioners appointed by the President, an arrangement might be made, that would relieve the nation from the contemplation of a controversy, which, if persevered ed in, would lead to consequences ever to be regretted. In making this advance, I was actuated only by a desire to prevent a collision between the two authorities, and I had flattered myself that I had appealed to one, whose age, wisdom, experience and patriotism, would insure a successful result.— Had the conciliatory feelings manifested by Michigan been met by a spirit of forbearance, much of the bitterness, which is now mingled with the controversy, might have been avoided. But I will not pursue the subject. It would ill-become me to speak of the manner in which the propositions of Michi-

gan have been met by the Executive of Ohio. Self-respect, and the official courtesy due from one state to another, forbid the imitation of an irritating example, however elevated may be the source from which it has proceeded.

On the arrival of Mr. Rush and Mr. Howard, the government commissioners, and after an unsuccessful interview held by them with the Governor of Ohio, at which they endeavored to induce him to delay the execution of the law of his state until after the next session of Congress, I was called upon by those gentlemen to suspend the operation of the territorial law of February 12, 1835, entitled "An act to prevent the exercise of a foreign jurisdiction within the limits of the territory of Michigan." In their note of the 10th April, they submit for consideration, whether there cannot be found, within the scope of the power of the executive, a mode of dispensing with the rigorous enforcement of a criminal law, and urge that as the act of February 12th was submitted to the revisal of Congress, it was the wish of the federal government that under no state of excitement should resort be had to force under this law, until an opportunity should be afforded for its repeal by Congress, if that body should deem such a measure expedient.

At my first interview with the commissioners, I had informed them, that if the authorities of Ohio would withdraw for the present all claim to jurisdiction, I believed that no obstacle to the re-marking of Harris's line would be interposed by the citizens of Michigan. This compromise having been rejected by Governor Lucas, I was not a little surprised that greater concessions were demanded from Michigan. In my answer to the commissioners, I informed them, that as the Executiveof the territory, I could have no authority to interfere with the regular operatians of the laws; that the courts of justice must be permitted to pursue their course unchecked; that the only power belonging to the Executive, to prevent the rigorous enforcement of a criminal law, was the pardoning power, and that power could only be applied to individual cases, after the authority of the courts had been expended;

and, further, that as the Attorney General of the United States had pronounced the act of February 12th a valid law, obligatory upon all persons residing within the limits of the territory, its operation could be suspended only by the power creating it. Indeed, the fact that Congress possesses a supervision over the acts of the Legislative Council is conceived to be no argument in favor of dispensing with the operation of a territorial law. The Legislative Council are authorized to pass all laws "for the good government of the territory," not conflicting with the articles of the ordinance of 1787, or the acts of Congress from which their powers are derived. The law of February 12th does not contravene the provisions of any act of Congress, and its operation should not be suspended, because, if the principle is once admitted, the suspension of every criminal law of the territory bearing upon the measures of Ohio may be demanded until the decision of Congress is known. Had these alleged instructions been obeyed, it would have been a virtual surrender of the disputed territory into the hands of the authorities of Ohio. My views and determination on this subject were communicated to the President through the Secretary of State; and, in answer, I was informed that the President considered it proper, that the civil jurisdiction of Michigan should be sustained, and the acts of Congress establishing the territory fully executed until they were modified or repealed. Such were the instructions of the President, as given on the 20th of April last.

In reply to other communications received from the commissioners, urging me to forbid the interruption of the remarking of Harris's line, I again informed them that I could not assume powers which belonged to another department of the government; that the Governor of Ohio was informed of the terms upon which he could re-mark the line; that he had endeavored to usurp jurisdiction over the territory, and that as the line was to be run in furtherance of that jurisdiction, the proper authorities would resist the measures by every lawful means. The attempt at re-marking the line was made;

the result you are aware of. Ohio failed in the measure; the laws of the territory were enforced, and her jurisdiction completely asserted.

In all arrests made by Michigan, the individuals have been admitted to bail, with the exception of one, who, by the instructions of the Executive of Ohio, remained in the village of Tecumseh, and who had been and is now going at large through the country. The object of this *constructive* imprisonment is probably answered, now, that the Legislature of Ohio has adjourned. Like all other instances complained of, the *imprisonment* of this individual exhibits fully the "rigorous" measures adopted by the authorities of Michigan. In justice to those entrusted with the execution of the laws, and to those citizens by whom they have been assisted, it is proper to state, that no harsh measures have characterized their proceedings. On the contrary, they have mingled with a firm and fearless determination to assert the supremacy of the laws, a forbearance and prudence creditable in the highest degree.

Although the inhabitants of the county of Lenawee, and particularly those of the county of Monroe, have been harrassed for months by the repeated outrages of the people of Toledo and its vicinity, claiming to be citizens of Ohio, in no instance have they exhibited acts of violence or unnecessary rashness. At a time when the Governor of Ohio had embodied a military force of five or six hundred men, for the avowed purpose of murdering our citizens while acting under the constitution and laws of the country, the authorities of Michigan forbore to follow the example. In no instance have they used the militia in the execution of their laws. ~~It has been~~ complained by Ohio, that fire arms were upon one occasion employed by a number of the sheriff's posse. This charge has the semblance of a pretext for its foundation. At the time of the arrest of individuals engaged in re-marking Harris's line, a few shots were fired over the heads of those who were attempting to escape; but as there existed no intention to shed the blood of our fellow-citizens of Ohio, it must prove a

source of regret that fright and exaggeration have tortured this affair into a matter of a serious character.

On the failure of the attempt to run the line, the Governor of Ohio temporarily abandoned his original purpose, and appealing to the wisdom of the Legislature, by proclamation, convened that body.

The people of Michigan now indulged a hope that they might be relieved from this unhappy controversy. That the Legislature of Ohio, finding difficulties in the way of the execution of their law not previously anticipated, would be induced to repeal it, or at least to suspend its operations until the proper tribunal could decide the question, was earnestly desired and expected. These anticipations have proved delusive. Ohio seems still determined to urge her claims to a portion of our territory. At the recent session of her Legislature, she has enacted two laws, which justify the belief that no arrangement, save that of surrender on the part of Michigan, will satisfy her cupidity. The first law authorizes the acceptance of what is termed an arrangement entered into between the President of the United States through his commissioners, and his Excellency the Governor of Ohio, having for its object the temporary adjustment of the difficulties appertaining to the possession of the disputed territory. The second, in the event that this arrangement is not effected, appropriates three hundred thousand dollars, to be used at the discretion of the Executive in carrying the act of Ohio of Febuary 23d into effect.

This compromise, as submitted through the Secretary of State, contemplates the following arrangement:

"1. That the pending prosecutions under the act of February 12, 1835, shall be discharged and discontinued."

"2. That no new prosecutions shall be commenced."

"3. That Harris's line shall be run and re-marked by the authorities of Ohio, without interruption from those of Michigan."

"4. That no forcible opposition be made by the authorities of Ohio or Michigan to the exercise of jurisdiction by the other upon the disputed territory within the time specified; the citi-

zens residing upon the territory in question resorting to one jurisdiction or the other, as they may prefer."

Such is the compromise recommended to our acceptance. The executive possessed no power to enter into such an arrangement. Where is the authority vested in him to discharge pending prosecutions; to say that new prosecutions shall not be instituted; to permit a certain act of jurisdiction on the part of Ohio, contrary to the provisions of an express law; and to will that the laws of the territory shall not be enforced, if certain individuals object to it? My course was plain. I possessed neither the inclination nor the power to accept this compromise. Legislation alone can effect it: and I now place before you the grave question, how far you will anthorize or justify such a surrender of the rights of your constituents?

I am truly at a loss, fellow citizens, to determine in what light this recommendation is to be viewed. Is it intended as simply an act of courtesy to the Legislature of Ohio, leaving us the victims of our own folly, if accepted; or in the language of the law of Ohio, is the observance on the part Michigan to be compelled by the United States? This is asked as a condition of the compromise. Language like this must be new to the people of this country. How is the observance of Michigan to be compelled? Is it at the point of the bayonet? I can see no other course. But does Ohio forget, that like herself we are community of freemen; that we are citizens of a common country, whose civil institutions readily right the injured? And does her legislature recollect that this demand is made of a patriotic Chief Magistrate, whose arms are only to be directed against the enemies of his country, or the open violators of her domestic tranquility in their attempt to trample under foot that constitution which he has sworn to protect and defend?

You have before you the terms of the proposed arrangement. In considering it, two questions will arise. First, can the government of the United States authorize a concurent jurisdiction with Ohio over the disputed territory? And sec-

ondly, would it be policy for Michigan to accept such a compromise as an object of temporary expediency?

I am clearly of opinion, that the general government cannot authorize the acceptance of the proposed arrangement, much less compel its observance, as is demanded. The policy of the administration is plain and easily determined. To ensure success, we have only to be true to ourselves. As early as the 21st of March, the government avowed the ultimate measures to be adopted by them in the event of a serious collision occurring between the authorities of the state and those of the territory. The Attorney General, the legal adviser of the President, when required to give his opinion upon the merits of the controversy, declares, that until the assent of Congress is given to the claim of Ohio, the tract of country in dispute must be considered as forming legally a part of the territory of Michigan." If such is the opinion of the government, with what semblance of justice can Michigan be asked to yield a portion of her jurisdiction to Ohio?

In reference to the power and duty of the President to interfere between the parties, the officer above named says, "it is only in obedience to the constitutional injunction, that the laws be faithfully executed, that the President can be authorized or requiree to interpose in any of the matters growing out of this controversy." The duty of the President is made imperative, whenever called upon to maintain the supremacy of an act of Congress. Are any of these acts of Congress now in force violated by the proceedings of the state of Ohio? We are informed by the attorney general that the acts which provide for the government and organization of the territory may be thus affected. This officer further informs the President as his opinion, that "the obstruction by unarmed individ-"uals, either singly or in numbers, of the process and orders "issued and made by the officers of Michigan, would proba-"bly be reached by the 22d section of the act of the 30th April, "1790, "for the punishment of certain crimes against the Uni-"ted States." "An attempt by a military force actually em-"bodied, to suppress the jurisdiction of the territorial officers,

"acting as they do under the laws of the United States, in the "disputed territory, and to maintain therein the exclusive ju- "risdiction of Ohio, would expose the parties concerned to "crimial prosecutions of a still more serious character."— The prosecutions intimated are plainly for treason; and there must be too much intelligence and patriotism amongst the citizens of Ohio, to doubt a course which a majority of them will pursue when the test is brought before them. The stigma of treason will never, it is trusted, blot the fair escutcheon of any state of our confederacy.

On the 9th of May, Mr. Rush and Mr. Howard are directed by the President to inform the Governor of Ohio, "that whenever the crisis referred to in the concluding part of the Attorney General's opinion shall arrive, in which the power of the civil officers shall be inadequate to the execution of their duties, it will be the President's *duty* to employ the means placed in his hands by the constitution and laws to maintain their supremacy; and that however painful it may be, it is a duty which he is determined to perform." On the 20th of the same month, I am again officially advised that "the President has seen with great satisfaction, that Governor Lucas has suspended the marking of the boundary line, and determined to appeal to the wisdom of the legislature; and he trusts, with the opinion of the Attorney General before them, and additional information, the Legislature and the Governor, seeing the difficulties which must attend the execution of the Ohio act, will unite in postponing the whole subject for the action of Congress." At a more recent date, the Governor of Ohio was again notified that the President would interpose his authority, if an attempt were made to re-mark Harris's line with an armed force, as had been intimated in his letter to the Secretary of State of the 1st of June. As late as the 3d of July, the Secretary of State, in his letter recommending the acceptance of the compromise alleged to have been proposed by Mr. Rush and Mr. Howard, denies "the authority of those gentlemen to enter into arrangements for the United States," and says "they have not at any time advised the department

of having proposed such an arrangement." I have been thus particular in noticing the sentiments of the general government, that their views, if possible, may be clearly understood; and with the conviction produced by them on my mind, I must indulge the expectation that the recommendation to Michigan, to accept the proposed arragement, has been prompted only by a sense of courtesy to the assembly of Ohio, and the gentlemen representing their views at Washington.

In the conclusion I have stated, I trust I am not deceived. The views and opinions of the government are expressed with too much decision by its legal officer to be mistaken. The determination of the President has been again and again repeated. A state attempts an open and undisguised violation of the constitution and laws of the country. Is not the federal government clothed with sufficient authority to assert their supremacy? Shall the affections and respect of the people of these United States for our union be alienated and destroyed by treason, disguised in the specious garb of state sovereignty?

Fellow Citizens, as individuals cherishing an ardent desire for the perpetuation of our civil institutions, we are bound to resist by all lawful means the slightest encroachment upon the constitution, attempted through us to be violated. It is a moral obligation which binds us together as a nation. This obligation will cease to exist, when obedience to the laws is no longer demanded. The precedent sought to be established by the state of Ohio, if permitted to pass unchecked, will lead to another, and ultimately precedent will become the highest authority of the country.

Relative to the expediency of adopting the proposed arrangement, but one opinion exists among our citizens. How, I would ask, is a concurrent jurisdiction to be recognized, when neither party is to be permitted to enforce its laws, and the people are to be at liberty to adopt one jurisdiction or another as they may choose? I must confess that I should view such a state of things as highly prejudicial to the rights of Michigan. This arrangement is eagerly sought by Ohio, as

she flatters herself that she will, by this means, obtain a possession, from which she cannot hereafter be ejected. If without possession, or even the right of possession, that state is permitted to dragoon us into a partial surrender of our jurisdiction, it may not be unimportant to ask ourselves, what are we to expect, if she once obtains the exercise of a permanent jurisdiction? But how is the jurisdiction of Michigan to be asserted, if no authority is to enforce obedience to her laws? The territorial government is at once annihilated. Criminals committing the highest offences are left at large, if they choose to reject the jurisdiction of the territory. Parties have no remedy before pour courts of justice; but every man becomes the asserter of his own rights, or the avenger of his own wrongs. All law is at an end. Such are the practical effects of the proposed arrangement. As illustrating the motives which govern certain individuals at Toledo, and for the purpose of showing the impracticability of a concurrent jurisdiction, I submit the concluding paragraph of the presentment of the Grand Jury of Wood County, Ohio, at the recent session of their court: "The Grand Jury would further "present, that from the evidence they have been able to col- "lect, they have come to the conclusion, that there are at Tole- "do and vicinity, men who have in this affair private and pe- "cuniary objects to accomplish rather than the public good; "that although they profess to be friendly to the jurisdiction "of Ohio, yet if it is not extended over them in a manner to "promote their own private views, they appear to be as wil- "ling to resist the authorities of Ohio as those of Michigan— "their object apparently being to encourage persecution on "the part of Michigan—to resist and perplex the local au- "thorities of Wood County—the more fully to enlist the sym- "pathies of the citizens abroad, particularly of that part of "Ohio not immediately acquainted with our local affairs."

The question is, however submitted to your consideration; and it may be asked, how far the Legislative Council possess the power to outlaw any portion of the citizens of the territory of Michigan? Can they be thrown without the pale of

that government which has been established for them by the Congress of the United States? If the power exists in one case, then does it in all; and as justly may the people of the city of Detroit, or any portion of the territory, be exempted from the obligations of citizens, as those residing upon the disputed tract.

Since issuing the proclamation for your assemblage, outrages of a most unjustifiable and unparalleled character have been committed by a number of persons at Toledo, upon officers of the territory, while in the exercise of their official duties. I regretto say, that a regular organization exists among these individuals for the purpose of resisting the execution of the laws of Michigan. This spirit of insubordination is greatly increased by the unjustifiabl accumulation at Toledo of arms by the authorities of Ohio, to be used by them as circumstances may demand. Although we may justly expect protection from the general government, when the crisis shall arrive demanding it, it may be worthy of your consideration to determine what measure you should adopt, having in view the maintainance of the rights of the territory under any contingency which may arise. Affidavits and other papers transmitted to you, will furnish you all the information you may desire relative to the recent disturbances.

Although aware that your deliberations at this time should be confined to the chief object of my communication, I must be permitted to recommend an amendment to the act of March 30th, 1835, postponing the election of members of the Legislative Council and the election of a delegate to Congress.— By the provisions of this law the people west of Lake Michigan are authorized to hold an election for delegate and members of the Council. The anticipated contingency will arise by the organization of the contemplated State Government in November next. The general law regulating these elections requires the returns of elections to be made to the Secretary of the Territory, who, with the Attorney General and Treasurer of the Territory, constitutes the board of canvassers, who are authorized to give a certificate of election to the de-

legate elect. The election, however, occurring before the appointment of these officers under the Territorial Government of Wisconsin, it will be necessary to create some other board of canvassers to meet the emergency, and to empower them to issue a certificate of election. Such an amendment of the act of March 30, 1835, is respectfully suggested for your consideration.

The question submitted to you is one demanding the gravest consideration. In your decision may be involved the most serious consequences to our country. Impressed with the conviction of the high responsibility resting upon you, I invoke your calm deliberation upou the subject. On the one hand, if yon accept the proposed compromise, you sacrifice the rights of the territory, as well as inflict a wound upon the confederacy. One of the leading features of the Federal Constitution is, the protection afforded to the smaller states, against the unjust demands of the larger. A firm adherence to the great objects of that constitution can afford us the only security for our rights and liberties as a state, and as American citizens. Let our government loose sight of the cardinal principles of our union, and there is no safety in its administration. The republican purity of our ancestors will give way to the contracted sway of temporary expediency. If the demand of Ohio is tamely submitted to, what becomes of the rights of the states? Surrender once to the sordid grasp of a state seeking empire or power, and the period may arrive when one portion of the nation, appealing to their own strength, will prescribe laws for their weaker neighbors.

On the other hand, if the arranegment is rejected, violence and insurrection may be the consequence. The anticipation of such events every true American must dwell upon with feelings of sorrow. No one contemplates such an issue to our controversy with more unfeigned pain than the humble individual who addresses you. But upon others, not upon us, rests the responsibility of that issue.

Follow citizens, the subject is now fully before you. My views are not disguised. Your determination is anxiously

expected by the public. You may rest assured, that no personal consideration will influence me in my future course; and that you will receive, so long as I discharge the duties of the executive department of the territory, a hearty co-operation in whatever you may determine, consistently with the maintainance of the rights and honor of the people of Michigan.

STEVENS T. MASON

Detroit, August 17, 1835.

DOCUMENTS.

(Copy.)

Department of State,
Washington, 3d July, 1835.

His Excellency, Stevens T. Mason,
Acting Governor of Michigan,

Sir:—You are doubtless aware that at the late session of the Ohio Legislature, an act was passed requesting the Governor to approve and comply with the terms and stipulations of an arrangement purporting to have been entered into between him and Messrs. Rush and Howard. With a view to obtain the President's aid towards the temporary adjustment of the controversy between Ohio and Michigan upon the terms of that act, Messrs. Swayne, Allen, and Disney have come to Washington at the request of Governor Lucas, and have had conferences with the President and Secretary of State.—Though those gentlemen do not profess to be clothed with any official authority in the matter, their characters are a sufficient guaranty for the correctness of their representations. In a communication made by them under date of the 1st inst., they have stated rather more at large than is contained in the act, the measures to be adopted on both side to give effect to the proposed arrangement. By the President's direction, I transmit copies of the act and of the letter of Messrs. Swayne, Allen, and Disney, and of my answer written by his direction. I am charged at the same time to inform you that although

Messrs Rush and Howard had no instructions to enter into arrangements for the United States, and have not at any time advised the Department of their having proposed such an arrangement as that referred to, yet the President is of opinion that under the present circumstances the great object of preserving the public tranquility without injury to the rights of either party until an opportunity be afforded for the action of the proper authority upon the subject, may be accomplished by a conformity on both sides to the terms proposed. He has therefore instructed me earnestly to recommend to you that no obstruction shall be interposed to the re-marking of Harris' line. That all proceedings already begun under the act of the Legislative Council of Michigan of the 12th February last, shall be immediately discontinued. That no prosecutions shall be commenced for any subsequent violations of that act until after the next session of Congress, and that all questions about the the disputed jurisdictions shall be carefully avoided, and if occurring inevitably, their discussions shall be postponed until the same period. The President makes this recommendation with the more confidence, as the Convention of Michigan has declared the people of the territory to be sincerely desirous that at all events further proceedings should be stayed by the parties interested until the Constitutional tribunals can act in the matter, and as the proposed arrangement, by not interfering with the exercise of jurisdiction by the authorities of Michigan, conforms in the most essential points to the opinion expressed by that enlightened body. The President is not insensible to the difficulties to be overcome in executing this arrangement, and he is persuaded that the people of the United States will duly appreciate whatever efforts may be made by the authorities of citizens of Michigan for preserving undisturbed the peace of this happy country.

I have the honor to be, sir,

Your obedient servant.

JOHN FORSYTH.

(Copy.)

Washington, July 1, 1835.

Sir—In accordance with the wish intimated by the President, at the close of our conversation this morning, we proceed to commit to writing the substance of the suggestions which we then had the honor to submit.

Before we do so, permit us to repeat, that although we have repaired to Washington at the instance of the Governor of Ohio, as indicated in his letter of which we were the bearers, we appear in the character of private citizens, and none other.

The purpose of our visit is expressed in the letter referred to. It is to bring about a more full and satisfactory mutual understanding than is believed at present to exist, and to aid in averting the unpleasant consequences which might otherwise possibly arise from the existing posture of things.

The arrangement entered into at Perrysburgh with Messrs. Rush and Howard, on the 7th of April, ultimo, (vide documents page 30,) provided,

1. That Harris's line should be run and re-marked pursuant to the act of the legislature of Ohio, without interruption.

2. That both parties should abstain from the forcible exercise of jurisdiction upon the disputed territory, until after the close of the next session of Congress.

The compromise bill of Ohio (as it is termed) contemplates that this arrangement should be carried out, and that whatever has been done inconsistent with its provisions, should be undone. In other words,

1. That the pending recognizances and prosecutions under the act of Michigan of the 12th February, 1835, should be discharged and discontinued.

2. That no new prosecutions under that act should be instituted.

3. That Harris's line should be run and re-marked by the authorities of Ohio, without interruption from those of Michigan.

4. That no forcible opposition be made by the authorities

of Ohio or Michigan to the exercise of jurisdiction by the other upon the disputed territory, within the time specified—the citizens residing upon the territory in question, resorting to the one jurisdiction or the other, as they may prefer.

What Ohio expects and desires, as is indicated by the bill referred to, is as follows:

1. That the authorities of Michigan shall not interrupt the running and re-marking of Harris's line by Ohio.

2. That the authorities having charge of the prosecutions under the act of Michigan above mentioned, shall discontinue those prosecutions, and discharge the recognizances taken for the appearance of the defendants; and that they abstain from instituting any prosecutions under that act within the time stated.

The President remarked that he believed advice from the proper source, to the authorities of Michigan, upon these points, would prove effectual. In this opinion we concur undoubtingly.

The steps suggested would therefore remove all practical difficulty, and prevent the possibility of an armed collision growing out of the subject.

This being done, we feel authorized to say, that while the authorities of Ohio would, as far as practicable, consistent with the arrangement of the 7th April, exercise peaceable jurisdictions upon the disputed territory, she would do nothing to prevent the exercise of a like jurisdiction by the authorities of Michigan, and that hereafter, as heretofore, she would manifest a spirit of the utmost forbearance, until Congress, at its next session, shall have acted upon the subject, and settled authoritatively, the contested question of right.

As respects the appointment of a commissioner on the part of the United States, to aid in running the line, that proposition was made by the legislature of Ohio in courtesy to the general government. There is nothing in her legislation which makes the appointment material. We deem it unnecessary, therefore, to remark further upon this point.

In order to render this communication as brief as possible,

we have purposely abstained from the discussion of all considerations touching the merits of the controversy.

With great respect, we are, sir,

Your most obedient servants,

(Signed)—N. H. SWAYNE,
W. ALLEN,
D. T. DISNEY.

Hon. JOHN FORSYTH, Secretary of State.

[COPY.]

DEPARTMENT OF STATE,
WASHINGTON, 3d July, 1835.

MR. FORSYTH,
To Messrs. Swayne, Allen, and Disney.

GENTLEMEN:—Your letter of the 1st instant, written in your character of private citizens, was received yesterday. By the directions of the President, to whom it has been submitted, I now have the honor to reply.

In every thing that has been done or suggested by the President, or by his authority, in regard to the question of the northern boundary of Ohio, he has been influenced solely by the desire to prevent, without prejudice to the rights of any one, collisions between the authorities of the General, State, or Territorial Governments, that would be destructive of the public peace and bring dishonor on the institutions of the country. If his views and wishes have not been correctly understood inOhio, he is happy to believe that the free communications which you have had with him and with the head of this Department, will enable you to correct the misapprehensions that may exist upon the subject in any quarter. This Department has never been advised by Messrs. Rush and Howard, of the arrangement stated in page 30 of the documents published at Columbus by order of the State of Ohio, to which you refer as having been entered into by them at Perrysburg.

The President is induced to believe, from the recent pro-

ceedings of the Legislature of Ohio, as explained by your letter, and the late resolutions of the Convention of Michigan, that an informal understanding may be produced through the instrumentality of this Department, which will meet the wishes of all, and effect the great object he has been most anxious to promote—the mutual suspension, until after the next session of Congress, of all action that could by possibility produce collision.

Supported in this belief by your letter, which he understands to be conformable to the wishes and intentions of Governor Lucas, the President, without taking upon himself any other character than that in which he has heretofore acted, will cause an earnest recommendation to be immediately sent to the Acting Governor of Michigan, and the other authorities of the Territory, whom he can rightfully advise in the performance of their duty "that no obstruction shall be interposed to the re-marking of Harris's line—that all proceedings, already begun under the act of the Legislative Council of Michigan of 12th February, shall be immediately discontinued—that no prosecutions shall be commenced for any subsequent violations of that act, until after the next session of Congress, and that all questions about the disputed jurisdiction shall be carefully avoided—and if occurring inevitably, their discussion shall be postponed until the same period.

The President confidently trusts that this recommendation, which he believes required by a regard for the public safety and honor, will be effectual with the authorities of Michigan, and will not fail to exercise all his constitutional power in this, as in every other instance, to preserve and maintain the public tranquility.

I have the honor to be, Gentlemen,

Your obedient servant,

(Signed) JOHN FORSYTH.

Messrs. SWAYNE, ALLEN, and DISNEY.

AN ACT

Accepting certain propositions made by the Commissioners appointed by the President of the United States, relative to the northern boundary of this State.

Whereas, the legislature of Ohio, at the last session, passed an act providing for the extension of her jurisdiction over that part of the territory claimed to belong to the Territory of Michigan; and whereas, the civil and military elections under the laws of Ohio have taken place throughout the disputed territory, and the organization under the same is now in all respects complete; and whereas, this legislature considers the right of the state to the disputed territory as clear and perfect as her right to any other part of her territory lying within her admitted limits; and whereas, great and lawless outrages have been perpetrated by the authorities of Michigan upon citizens of the disputed territory, for recognizing the laws and rightful jurisdiction of the state, within whose limits they reside; and whereas, this legislature feels bound to protect said citizens from a repetition of such outrages,—yet, as the President of the United States, acting through the Hon. Richard Rush and Benjamin C. Howard, commissioners on the part of the President, and his Excellency the Governor of this state, entered into an arrangement on the 7th day of April last, having for its object the temporary adjustment of the difficulties appertaining to the possession of, and jursdiction over, the said disputed territory, the terms and provisions of which arrangement were as follows, viz:

1. That Harris's line should be run and re-marked pursuant to the act of the last session of the legislature of Ohio, without interruption.

2. The civil elections under the laws of Ohio having taken place throughout the disputed territory, that the people resi-

ding upon it should be left to their own government, obeying the one jurisdiction or the other, as they may prefer, without molestation from the authorities of Ohio or Michigan, until after the close of the next session of Congress; and whereas, the legislature is willing, from a desire to preserve the public peace and harmony, to observe the stipulations of the arrangement aforesaid; *Provided*, Its observance on the part of Michigan be compelled by the United States, and the proceedings of Michigan, in violation of that arrangement, be immediately discontinued and annulled:—Therefore,

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio*, That his Excellency, the Governor, be, and he is hereby, requested to observe and comply with the terms of the arrangement entered into on the 7th day of April last, by and between the President of the United States, acting through the Hon. Richard Rush and Benjamin C. Howard, commissioners duly appointed by the President of the United States, and his Excellency the Governor of this state; and if all the terms and stipulations of said arrangement shall be faithfully observed on the part of the United States, and all bonds and recognizances taken, and all prosecutions and indictments commenced under the act of the Legislative Council of Michigan of the 12th February, A. D. 1835, shall be immediately discharged, annulled, and discontinued,—then, and in that case, the action and operation of all laws and parts of laws of this state, inconsistent with the terms of said arrangement, are hereby suspended until after the close of the next session of Congress.

SEC. 2. That if the United States, or the authorities of Michigan, shall, within the time specified in said arrangement, do any act inconsistent with the terms thereof; or if said bonds, recognizances, indictments, and prosecutions shall not be immediately discharged, discontinued, and annulled, as aforesaid, then this act to be null and void.

SEC. 3. That the Governor of the state be, and he is hereby, authorized and required to issue his proclamation, whenever, in his opinion, the terms and stipulations of said arrange-

have been violated, declaring such to be the fact; and from and after the date of such proclamation, the suspension of all laws and parts of laws aforesaid shall cease and determine.

JOHN M. CREED,
Speaker of the House of Representatives.
DAVID T. DISNEY,
Speaker of the Senate.

June 20, 1835.

EXECUTIVE OFFICE,
DETROIT, July 11th, 1835.

SIR:—I have the honor to acknowledge the receipt of your letter of the 3d instant, which, as evidently desired by you, will be immediately submitted to the Legislative Council for their consideration. This course is not expressly suggested by you, but as the propositions submitted for the adjustment of the controversy with Ohio can be carried into effect on the part of Michigan by legislative action only, if at all, I have adopted the sole means of meeting your views, and have by proclamation convened the Legislative Council on the 17th day of August next, for the purpose of taking the subject into consideration.

Where, however, I may here respecfully ask, exists that earthly power, which can permit a State to assume jurisdiction over a Territory of the United States, so long as the acts of Congress for its government remain unrepealed, and the President is sworn to see the laws faithfully executed?

It can scarcely be necessary, at present, to urge upon your consideration the difficulties and objections, which occur to my mind, forbidding the proposed compromise. In my letter, of the 11th of April, to Messrs. Rush and Howard, I stated my reasons for then rejecting this proposition. It is before you. My views yet remain unaltered, and I think unalterable.—I will, however, follow the precedent set by the Governor of

Ohio, and appeal to the wisdom of the Legislature. To that body I will submit the subject, and abide their decision.

One assertion, it may not be unimportant, here to notice.—I find it declared in the law of Ohio, to which my attention tion has been drawn, that a perfect organization of government exists throughout the disputed territory under the laws of that State. The object to be gained by the assertion, I am at a loss to determine, unless possession is to be urged, on the part of Ohio, in favor of her claim, before the next Congress. Such, I fear to be the case, and I must urge upon the General Government the *fuct*, that the jurisdiction of Ohio has not, as yet, been known on that territory. The jurisdiction of Michigan is complete. If Ohio is satisfied with the possession she has, why the late meeting of her Legislature, or the present proposed terms for adjustment ?

If, then, *possession* is already brought up against the *right* of Michigan, I would ask, can it be expected, that she can recognize a concurrent jurisdiction over a part of her soil with another state ? What are the terms upon which jurisdiction is to be exercised ? Neither party shall use force; but the people are to submit to such laws, and to such officers, as they may choose: If they object to the execution of her law, it must not be enforced. The people residing on the disputed territory, you are aware, favor the claim of Ohio: *To the laws of that State they are willing to submit.* I would respectfully ask, if an unconditional surrender by Michigan of her jurisdiction and territory, would not better subserve the purposes of Ohio ?—Either would be equally injurious to the rights of the Territory.

I had hoped sir, that this unpleasant correspondence would not again have been renewed. No one can feel more solicitude than myself, for an amicable adjustment of the unfotunate controversy, provided the honor and rights of the territory with which I am identified are not sacrificed. For myself I have ho personal considerations involved in the question, nor in the course I shall pursue. While I will endeavor to discharge my duty faithfully as a public officer of the gen-

eral government, I feel that I am not to forget that I have the rights of a high minded and patriotic people committed to my hands. Those rights are not to be hazarded, until the people themselves cease to value them. Before their immediate representatives I will place the charge committed to me. The result of their deliberations will be communicated to you. In the mean time I trust nothing will occur, at variance with the amicable disposition and determination of the President.

I have the honor to be
Your obedient servant,
STEVENS T. MASON

Hon. JOHN FORSYTH,
Secretary of state.

It may not be unimportant to suggest to the Secretary of State, that the county of Lucas has been formed out of the disputed territory, and a court directed to be held at Toledo, as the seat of justice, on the first Monday of September.

LEGISLATIVE COUNCIL.

DETROIT, August 19, 1835.

MR. DOTY, from the Select Committee, to whom was referred so much of the Message of the Executive as relates to the arrangement proposed to the authorities of Michigan by the Secretary of State, in relation to the claim of Ohio to a part of the Territory of Michigan, submitted the following

REPORT:

That, in examining the subject which has been referred to them, the committee have deemed it unnecessary to present the merits of the controversy with Ohio, believing, as they do, that the rights of Michigan have been fully submitted to the public, and ably and clearly sustained in the several messages and documents of the Executive and Delegate of this territory—in the appeal of the late Convention, and in the memorials of this Council.

We cannot doubt, from the expression which has been given, that it is the opinion of the American people, as well as of the President of the United States, that no improper step has been taken by Michigan to resist the efforts of Ohio to extend her boundaries.

Finding that those efforts have been unsuccessful, either to enlist public sympathy, the supporting of the doctrine of state rights, or to obtain the actual possession of the territory, her willingness to accede to certain propositions made by Richard

Rush and Benjamin C. Howard, is now indicated by an Act of her Legislature. These propositions, *it is stated*, are recommended by the President to the authorities of Michigan, for their concurrence not, we presume, because they are deemed either reasonableor just, but, because they are supposed to be measures which may be resorted to for the purpose of maintaining the public peace.

We would ask, with whom has this difficulty originated?—Is it Michigan or Ohio which proposes to violate the public peace, by a trespass upon the acknowledged territory of the other? We would reply, that Michigan has quietly and undisturbedly enjoyed the possession of every part of the country within her limits for more than thirty years, and from her creation, and, in the opinion of the Attorney General, *according to the Acts of Congress.* "A million of freeman," of Ohio, have first threatened, and then attempted, to distrub that quiet possession, during the present year; but as these attempts have been wholly impotent and unsuccessful, it is now proposed, at the instance of several persons acting in their private capacities, to admit that state to a nominal jurisdiction over, and the actual possession of, so much of the country as is desired by her.

To effect this object, the following is the arrangement proposed, and which, is now submitted to the Council for its sanction:—

1st. That the pending prosecutions, under the act of Feb. 12, 1835, shall be discharged and discontinued.

2d. That no new prosecutions shall be commenced.

3d. That Harris's line shall be run, and re-marked by the authorities of Ohio, without interruption from those of Michigan.

4th. That no forcible opposition be made, by the authorities of Ohio and Michigan, to the exercise of jurisdiction by the other upon the disputed territory within the time specified; the citizens, residing upon the territory in question, resorting to one jurisdiction or the other, as they may prefer.

It is highly gratifying to your committee, to learn, from the correspondence of the Secretary of State, that Messrs. Rush and Howard had no authority, from that department, to enter into this arrangement with the Governor of Ohio; because we are unable to discover by what instrument the President is empowered to dispense with the execution of the acts of Congress, or to permit either of the states of the Union to extend its jurisdiction over the territories of the United States.

We are not, therefore, disposed to regard these propositions as emanating from the President, but rather as the suggestions of two eminent individuals, which were promptly and properly rejected by the Executive of Michigan, when they were first made, but which have been since re-produced for purposes which it is unnecessary for Michigan to scan, so long as she only seeks for justice. On the 14th of March, 1835, Gov. Lucas is informed by the Secretary of State, that "it appears to him, (the President) that as the state of Ohio has "already brought the subject before Congress, it should be "left for the action of that body." The Secretary of State, in his letter of the 20th April, 1835, to the Acting Governor, says,—"The President considers it proper, that the civil jurisdiction of Michigan should be sustained, and the acts of "Congress establishing the territory fully executed, until they "are repealed or modified by Congress."

Mr. Rush and Mr. Howard were directed, by the President, on the 9th of May, to inform the Governor of Ohio, "that whenever the crisis, referred to in the concluding part "of the Attorney General's opinion, shall arrive, (resistance "by force to the laws of the United States) in which the power of the civil officers shall be inadequate to the execution "of their duties, IT WILL BE THE PRESIDENT'S DUTY to employ the means placed in his hands by the constitution and "laws to maintain their supremacy; and that however painful it may be, IT IS A DUTY WHICH HE IS DETERMINED TO PERFORM."

We think that no one can doubt, after perusing these docu-

ments, what is the course of policy which the President desires Michigan to pursue on this occasion.

We cannot, however, but express our astonishment that these propositions should again be offered to Michigan.

Your committee do not deem it advisable to investigate the merits of this arrangement, as they are of the opinion, that it is entirely incompetent for this Council to enter into any arrangement to permit the exercise of a foreign jurisdiction within the limits of Michigan, established by the Ordinance and by Acts of Congress. They also believe it would be inexpedient to do so, if they possessed the power. It should be entitled "An Arrangement to enable Ohio to obtain possession of a part of the territory of Michigan, without resistance." If the acts of Congress are not binding upon Ohio, they are not upon Virginia, New-York, and Indiana; and, by submitting to the measure proposed, the Council would only invite those Sates to renew their claims to the whole of the territory, and to assert their jurisdiction within her limits. Your committee are advised, that it was proposed in the Legislature of Ohio, at its last session, to divide the territory of Michigan between that state and Indiania, upon the same principles, it is presumed, as those upon which Poland was partitioned by the powers of Europe, amongst her more powerful neighbors. In the opinion of some persons, such a step would most happily terminate this controversy, and secure the public peace.

The laws of the territory, to which allusion is made in the arrangement, are deemed necessary to secure the due execution throughout the territory, of the acts of Congress and of the Council, and to the maintainance of the government of Michigan. The object of the act of Feb. 12, 1835, had not necessarily a more particular reference to this than to any other state; it was a general law, intended to prevent our citzens from accepting commissions from foreign powers and thus disturbing the tranquility of the territory; and it would be just as reasonable for Ohio to complain of any other terri-

torial law, or for the authorities of Canada to take exception to this enactment as for those of Ohio.

The 4th proposition virtually admits that a divided jurisdiction could not be enforced; anarchy and collision could be the only result of such a measure. If every criminal is allowed to choose the tribunals before which he shall be tried, and neither has the power of enforcing its process or judgments, it is very clear that it secures the commission of crime with impunity, as no offender would choose to be tried by either. It may possibly be pleasant to the legislature of Ohio to contemplate such a state of things, but we are satisfied the citizens of Michigan desire no such government.

We confidently believe that the principles of the Proclamation of the President which was issued to assert and maintain the supremacy of the laws in the state of South Carolina are still remembered as the principles upon which the general government is, and is to be, administered; and that when the citizens of Ohio resist by an armed military force the execution of an act of Congress, they will be guilty of the same crime as the citizens of South Carolina, if they had in the same manner resisted the tariff laws. Whilst the patriotism and firmness of the Chief Magistrate on that occasion are recollected, we cannot be induced to believe but that he will be found equally firm and patriotic to resist every effort on the part of Ohio to assume to herself the powers of the general government, to control the acts of Congress, to overturn a government as legally and rightfully established as her own, and to parcel out the territories of the United States amongst the adjoining states.

The attitude of Michigan is that of resistance to an unauthorized encroachment. She disturbs not the public peace. She makes no appeal to arms but in self-defence, and then only to repel an invasion by a foreign military force, introduced, to disturb her government in a part of the territory which she has peaceably and quietly held from her earliest existence.

The attitude of Ohio is quite different. She is a trespasser upon Michigan; she is a violater of the laws of the Uni-

ted States, and when her acts of aggression cease, peace is restored. She disturbs the public tranquility by attempting to settle, by force, a question of right; and she appeals from the constitutional tribunals to the power of her "million of freemen." This right of Ohio is the same now as it was in the year 1802. It has never been acknowledged by any government but her own. It was then a boon solicited of Congress; now it is discovered that the Maumee was as much within the proper limits of the state in 1802, as the Sciota.—We would simply inquire why, if this question was so clear in her favor to every body then as she says it is now, her jurisdiction was not *then*, on her admission, extended over the country now claimed; and why she has almost annually solicited Congress to grant her this jurisdiction if it was hers upon the authorities upon which she at present asserts her right?

But Ohio having declared that Michigan has no rights; that this is a question between herself and the general government alone, we are unable to discover why it is referred to the authorities of Michigan at all, as Ohio must be ready at any time to deny their power to entertain or dispose of it.

We would leave this matter then with Ohio and the general government, to settle according to the constitution and laws. It is our duty however to express our determination, and we have no doubt that such is the will of the people of Michigan, to submit to no arrangement by which the integrity of the limits of Michigan as established by the act of 1805 is violated. If Ohio is satisfied with her efforts, she may rest where she is; but she can never be admitted to a joint possession of our territory, although such a measure may have received the sanction of those high in authority. A portion of the territory of Michigan may possibly be forcibly wrested from her by Ohio; but this we believe cannot occur by the consent of the general government, until the Union is dissolved; and this Council can never advise to submission to such a dismemberment, whether it be partial or otherwise, until all resistance is vain.

The committee therefore respectfully recommend for adoption the following resolutions, which have been prepared in the language used by the Attorney General of the United States, in relation to this controversy. It is taken from the Opinion which was communicated by him to the President, upon the present rights of Michigan and Ohio, and upon the power of the President to compel Ohio to submit to the laws of the United States:

Resolved, *"That until the assent of Congress is given to the "claim of Ohio, the tract of country in dispute must be consid- "ered as forming legally a part of the territory of Michigan."*

Resolved, "That the act of the legislature of Ohio, extend- "ing the jurisdiction of that state over a part of the territo- "ry of Michigan, is repugnant to the act of Congress of the "11th January, 1805, erecting that territory, and to the acts "subsequently passed for its government; and its actual and "complete enforcement would therefore involve a most seri- "ous violation of the laws of the United States."

IN COUNCIL,

DETROIT, August 20, 1835.

The report and resolutions of the select committee, to whom was referred so much of the message of the Executive as relates to the arrangement proposed to the authorities of Michigan by the Secretary of State, in relation to the claim of Ohio to a part of the territory of Michigan, being taken up for consideration, the same were unanimously adopted.

On motion of Mr. Doty,

Resolved, That the acting Governor of this territory be requested to transmit a copy of the preceding report and resolutions to the Secretary of the department of state of the United States.

JOHN McDONELL,
President of the Legislative Council.